

**Introduced by Senator Poochigian**

February 22, 2005

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An act to add Section 55.3 to the Civil Code, and to amend Section 4452 of the Government Code, relating to special access.

LEGISLATIVE COUNSEL'S DIGEST

SB 855, as introduced, Poochigian. Special access: liability.

Under existing law, a person, firm, or corporation that interferes with the access rights of a disabled individual is liable for the actual damages of each offense and any amount determined by a judge or jury of up to 3 times the amount of the actual damages, but in no case less than \$1,000. Existing law requires the State Architect to adopt and develop building standards for making buildings, structures, sidewalks, curbs, and related facilities accessible to and usable by persons with disabilities, as specified.

This bill would establish notice requirements for an alleged aggrieved party to follow before bringing an action against a business for an alleged violation of the above-described provisions. The bill would require that party to provide specified notice to the owner of the property, agent, or other responsible party where the alleged violation occurred. The bill would require that owner, agent, or other responsible party to respond within 30 days as to a description of the improvements to be made or rebut the allegations, as specified. If opting to fix the alleged violation, the bill would provide 120 days to do so. The bill would provide that its provisions do not apply to claims for recovery of special damages for an injury in fact, and would authorize the court to consider previous or pending actual damage awards received or prayed for by the alleged aggrieved party for the same or similar injury.

Vote: majority. Appropriation: no. Fiscal committee: no.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

- 1     SECTION 1. The Legislature finds and declares all of the  
2 following:  
3     (a) The federal Americans with Disabilities Act of 1990  
4 (Public Law 101-336) and this state's complementary special  
5 access laws set forth in Sections 51, 52, 54, 54.1, and 54.3 of the  
6 Civil Code and Sections 4450 and 4452 of the Government Code  
7 are intended to protect Californians with special needs from  
8 unlawful and unfair restrictions on access to the full and free use  
9 of the streets, highways, sidewalks, walkways, public buildings,  
10 medical facilities, including hospitals, clinics, and physicians'  
11 offices, public facilities, and other public places.  
12     (b) These special access laws are susceptible to abuse through  
13 vexatious litigation that is not pursued with the primary intent of  
14 rectifying a wrong or advancing or creating a public benefit.  
15     (c) Vexatious special access lawsuits unduly burden our courts  
16 and taxpayers and do not result in improved access for those with  
17 special access needs. Those lawsuits cost California jobs and  
18 economic prosperity, unfairly threaten small businesses, force  
19 businesses to respond with higher costs for goods and services,  
20 and have adverse impacts on levels of employment and employee  
21 compensation.  
22     (d) It is the intent of the Legislature in enacting this act to  
23 eliminate vexatious special access lawsuits while protecting the  
24 right of individuals to retain counsel and file an action for relief  
25 pursuant to the federal Americans with Disabilities Act of 1990  
26 (Public Law 101-336) and Sections 51, 52, 54, 54.1, and 54.3 of  
27 the Civil Code and Sections 4450 and 4452 of the Government  
28 Code.  
29     (e) It is the intent of the Legislature in enacting this act to  
30 restrict the filing of special access lawsuits under California law  
31 without first notifying and allowing property owners, agents, or  
32 other responsible parties the opportunity to improve access by  
33 curing any violations.  
34     (f) It is not the intent of the Legislature in enacting this act to  
35 prohibit the filing of special access lawsuits where, because of an

1 alleged violation of this state’s special access laws, an individual  
2 has suffered an injury in fact for which a proceeding in a court of  
3 competent jurisdiction is proper.

4 SEC. 2. Section 55.3 is added to the Civil Code, to read:

5 55.3. (a) Notwithstanding any other provision of law, prior to  
6 filing a claim under Section 51, 52, 54, 54.1, or 54.3, or Section  
7 4450 or 4452 of the Government Code, the alleged aggrieved  
8 party shall notify the owner of the property, agent, or other  
9 responsible party where the alleged violation occurred by  
10 personal service, in accordance with applicable state or federal  
11 laws, or certified mail, of all alleged special access violations for  
12 which a claim may be filed by the alleged aggrieved party. That  
13 notice shall contain the following language:

14 “This letter is to inform you that the property located at  
15 (address of property), for which you are the property owner,  
16 agent, or other responsible party, may be in violation of federal  
17 and/or state special access laws pursuant to (expressly cite the  
18 federal and/or California statute of which the property is believed  
19 to be in violation) and caused harm to (list the name of the  
20 alleged aggrieved party).

21 Specifically, the possible violation(s) has/have been identified  
22 as follows: (Notice must identify the specific facts that constitute  
23 the alleged violation, including the date on which the alleged  
24 violation occurred and identification of the location of the alleged  
25 violation with sufficient detail, so that the location can be  
26 identified by the property owner, agent, or other responsible  
27 party).

28 Under Section 55.3 of the California Civil Code, you have 30  
29 days to respond to this notice by certified mail or personal  
30 service. Your response must be addressed to (give address where  
31 personal service may be received or certified mail may be sent).  
32 California law allows you to respond in one of three ways:

33 (1) You may expressly state that improvements will be made  
34 to bring the premises into compliance with applicable special  
35 access laws. If you respond in this fashion, you have a maximum  
36 of 120 days to make these improvements or repairs. The 120-day  
37 period shall begin on the date your response to this notice is  
38 received at the address given above. If the improvements or  
39 repairs necessary to bring the property into compliance with

1 federal and state special access laws are not completed in 120  
2 days, a lawsuit may be brought against you.

3 (2) You may challenge the validity of the alleged violations. If  
4 you respond in this fashion, a lawsuit may be brought against you  
5 immediately.

6 (3) If the violations listed above are the same or similar to  
7 previous violations, that you believe have been corrected, you  
8 may respond by stating that the necessary repairs have been  
9 made to bring the property into compliance with federal and state  
10 special access laws. You must also attach evidence that verifies  
11 those improvements.

12 If you have any questions about this notice or your rights under  
13 federal or California law, please contact your legal counsel.”

14 (b) Beginning with the date of notice, the property owner,  
15 agent, or other responsible party where the alleged violation  
16 occurred shall have 30 days to respond by certified mail or  
17 personal service to the alleged aggrieved party. That response  
18 shall communicate any of the following:

19 (1) Expressly state that improvements will be made to bring  
20 the premises into compliance with applicable laws. A response in  
21 this fashion by the property owner, agent, or other responsible  
22 party where the alleged violation occurred shall not be  
23 considered an admission of guilt and is inadmissible in any future  
24 claims based on the same facts filed against the property owner,  
25 agent, or other responsible party.

26 (2) Challenge the validity of the alleged violation. If the  
27 property owner, agent, or other responsible party where the  
28 alleged violation occurred so responds, the alleged aggrieved  
29 party may file a claim, subject to any applicable statutes of  
30 limitations, any time after receipt of notice as prescribed in this  
31 section.

32 (3) State that the alleged violations identified by the alleged  
33 aggrieved party have been corrected to comply with applicable  
34 state and federal special access laws. The property owner, agent,  
35 or other responsible party where the alleged violation occurred  
36 shall also attach evidence that verifies those improvements.

37 (c) If the property owner, agent, or responsible party where the  
38 alleged violation occurred responds in the manner described in  
39 paragraph (1) of subdivision (b), the property owner, agent, or  
40 responsible party where the alleged violation occurred shall have

1 120 days to remedy the alleged violation. The 120-day period  
2 shall begin on the date the alleged aggrieved party receives a  
3 response, pursuant to subdivision (b), from the owner, agent, or  
4 responsible party where the alleged violation occurred.

5 (d) If, at the end of the 120-day period, the property owner,  
6 agent, or responsible party where the alleged violation occurred  
7 has not made the improvements described in paragraph (1) of  
8 subdivision (b) and fails to provide satisfactory explanation as to  
9 why those repairs were not yet completed, the alleged aggrieved  
10 party may file a claim.

11 (e) If the property owner, agent, or other responsible party  
12 where the alleged violation occurred has made the improvements  
13 described in paragraph (1) of subdivision (b), no current or future  
14 alleged aggrieved party shall receive any damages or attorney's  
15 fees, other than special damages, for any claim arising out of the  
16 same or similar facts that served as a basis for the alleged  
17 violation.

18 (f) This section applies to all claims for damages or fees, other  
19 than those praying for special damages arising out of injuries in  
20 fact. This section shall not be construed to limit claims for  
21 recovery of special damages filed by any person who suffers an  
22 injury in fact because they were denied full and equal access to  
23 an accommodation as required by Section 51, 52, 54, 54.1, or  
24 54.3, or Section 4450 or 4452 of the Government Code.

25 (g) In making a determination of the amount of damages  
26 awarded to a successful plaintiff, a court or jury shall consider  
27 previous or pending actual damage awards received or prayed for  
28 by that plaintiff for the same or similar injury.

29 SEC. 3. Section 4452 of the Government Code is amended to  
30 read:

31 4452. (a) It is the intent of the Legislature that the building  
32 standards published in the State Building Standards Code relating  
33 to access by the physically handicapped and the other regulations  
34 adopted by the State Architect pursuant to Section 4450 shall be  
35 used as minimum requirements to insure that buildings,  
36 structures and related facilities covered by this chapter are  
37 accessible to, and functional for, the physically handicapped to,  
38 through, and within their doors, without loss of function, space,  
39 or facility where the general public is concerned.

1     (b) Any unauthorized deviation from ~~such~~ *those* regulations or  
2     building standards shall be rectified by full compliance within 90  
3     days after discovery of the deviation.

4     (c) *Notwithstanding subdivision (b), prior to any action*  
5     *commenced for an alleged violation of Section 4450 or this*  
6     *section, the notice requirements specified in Section 55.3 of the*  
7     *Civil Code shall apply to the alleged aggrieved party.*